

# City of Detroit

## CITY COUNCIL

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TO: The Honorable City Council

FROM: David Whitaker *DN*  
Elizabeth Cabot *EC*  
Sherée Edwards *SE*

DATE: January 26, 2006

RE: **PROCEDURE FOR SUBMITTING CHARTER AMENDMENT TO THE CITY'S VOTERS**

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This memo from the Research and Analysis Division (RAD) is in response to Honorable Detroit City Council's inquiry regarding the proper procedure for effecting a charter amendment.

### 1. Background Discussion/Law

The power to adopt the Charter of the City of Detroit was conferred upon the electorate by state statute, specifically the Home Rule City Act, MCL 117.1 *et seq.* The Act specifies mandatory charter provisions, including the method of election of officials, levying of taxes and the conduct of legislative business. MCL 117.3. The Act also specifies the means by which a city's charter may be amended. MCL 117.21 provides as follows:

Sec. 21. (1) An amendment to an existing city charter, whether the charter was adopted under this act or formerly granted or passed by the legislature for the government of a city, **may be proposed by the legislative body of a city on a 3/5 vote of the members-elect or by an initiatory petition**. If the amendment is proposed by the legislative body of the city, the amendment shall be submitted to the electors of the city at the next regular municipal or general state election, or at a special election, held not less than 60 days after the proposal of the amendment. If the amendment is proposed by an initiatory petition, the amendment shall be submitted to the electors of the city at the next

regular municipal or general state election held in the city not less than 90 days after the filing of the petition.

(2) Proposed charter amendments and other questions to be submitted to the electors shall be published in full with existing charter provisions that would be altered or abrogated by the proposed charter amendment or other question. The purpose of the proposed charter amendment or question shall be designated on the ballot in not more than 100 words, exclusive of caption, that shall consist of a true and impartial statement of the purpose of the amendment or question in language that does not create prejudice for or against the amendment or question. **The text of the statement shall be submitted to the attorney general for approval as to compliance with this requirement before being printed . . .** The form in which a proposed charter amendment or question shall appear on the ballot, unless provided for in the initiatory petition, shall be determined by resolution of the legislative body, and if provided for by the initiatory petition, the legislative body may add an explanatory caption.

Section 3-101 of the City Charter authorizes City Council to place a proposal on a city election ballot. It provides that “[t]he city council may, by resolution adopted not less than seventy (70) days before any election or special election, submit any proposal to the voters of the city.”

State election law (MCL 168.646a) gives further direction as evidenced by the following:

(2) If a local or county question is to be voted on at a primary, special, or general election at which state officers are to be voted for, the ballot wording of the question shall be certified to the local or county clerk at least 70 days before the election. If the wording is certified to a clerk other than the county clerk, the clerk shall certify the ballot wording to the county clerk at least 68 days before the election. . . . (Emphasis added.)

State statute also addresses the form of proposals submitted to the voters. MCL 168.643a directs that,

A question submitted to the electors of this state or the electors of a subdivision of this state shall, to the extent that it will not confuse the electorate, be worded so that a “yes” vote will be a vote in favor of the subject matter of the proposal or issue and a “no” vote will be a vote against the subject matter of the proposal or issue. The question shall be worded so as to apprise the voters of the subject matter of the proposal or issue, but need not be legally precise. The question shall be clearly written using words that have a common everyday meaning to the general public. The language used shall not create prejudice for or against the issue or proposal.

Based upon the provisions of applicable state statute and the City Charter, City Council clearly has authority to adopt a resolution to submit a ballot proposal, including a proposed charter amendment, to the voters of the City of Detroit.

## 2. Precedent Exists for the Proposed Amendment.

The 1974 City Charter, as adopted, included Section 4-104 addressing Council vacancies. It read as follows:

If a vacancy occurs on the city council, a majority of city council members serving shall appoint a successor who shall serve until a new elected city council member takes office. A city council member shall be elected (for the unexpired term, if any) at the next general election in the city held not sooner than 180 days after the occurrence of the vacancy.

On December 6, 1979, City Council adopted a resolution proposing that the language be amended as follow:

If a vacancy occurs on city council thirty days or more before the filing deadline for a general election in the city or special city-wide election, the vacancy shall be filled at that election for the remainder of the unexpired term. If a vacancy occurs on city council less than thirty days before the filing deadline for a general election in the city or special city-wide election, the vacancy shall not be filled until the subsequent general election in the city or special city-wide election.

(See attached)

The proposed Charter amendment, which was in fact adopted at the November 1980 election, is substantially similar to the language currently in effect as section 3-101 of the 1997 City Charter.<sup>1</sup> Thus the proposed amendment is in essence the reverse of the 1980 Charter amendment.

The proposal at issue is an appropriate subject for Charter amendment. Aside from the obvious precedent of the 1980 amendment, the Michigan Court of Appeals also addressed the issue of whether an amendment, as opposed to a full charter revision, is acceptable. In *Midland v Arbury*, 38 Mich App 771 (1972), the Court observed,

[i]f the proposed change only amends, alters, or improves within the lines of the original charter, it is an amendment and the passage by the city electorate was valid. But, if the proposed change totally disrupts, cancels, abrogates, or makes inoperable the original charter, it is a revision and the amendment procedure and vote is subject to reversal. A change in the form of government of a home rule city may be made only by revision of the city charter, not by amendment. *Id.* at 774.

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<sup>1</sup> The current Charter section differs in that it addresses vacancies both on the City Council and in the Office of the Mayor.

Clearly, this proposal does not effect a change in the form of government of the city. It is therefore appropriate for referral to the state attorney general and ultimately to the City's voters.

attachments

Adopted as follows:

**Budget Department**

November 28, 1979

Honorable City Council:

Re: Required Funding—Recorder's Court Psychiatric Clinic and Jury Commission.

On April 12, 1979, the Mayor submitted the proposed budget for the 1979-80 fiscal year to your Honorable Body.

Included in that budget were a number of basic assumptions that required positive actions of the State Legislature or the Federal Government. To date a number of those assumptions have not been taken and the assumptions have not come to fruition. Specifically, we anticipated that the Governor's proposal for court reorganization would be approved, financed and implemented by October 1, 1979. Therefore, we only funded, in the traditional fashion, Recorder's Court, Jury Commission and the Recorder's Court Psychiatric Clinic through September 30, 1979.

Because this legislation has not been enacted, I requested, JCC 10-3-79, that your Honorable Body transfer funds to continue the Recorder's Court, Jury Commission and the Recorder's Court Psychiatric Clinic through December 31, 1979.

As you know, this legislation is still pending, so once again, I am requesting that your Honorable Body transferring \$36,966 to continue funding the Recorder's Court, Jury Commission, and \$144,974 for the Recorder's Court Psychiatric Clinic through February 29, 1980. These transfers will reduce the Historical Branch Museums accounts by \$181,970. Your adoption of the attached resolution is requested.

Respectfully submitted,  
WALTER L. STETCHER  
Budget Director

Approved:  
PAUL R. THOMPSON, JR.  
Finance Director

By Council Member Eberhard:  
RESOLVED. That the 1979-80 Budget is hereby amended as follows:  
Reduce Appropriation No. 30-0083; Branch Historical Museum by \$181,970;  
Increase Appropriation No. 82-0185, Jury Commission, by \$36,996; Increase Appropriation No. 84-0186, Psychiatric Clinic, by \$144,974; and be it further,

RESOLVED. That the Finance Director be and is hereby authorized to honor payrolls and vouchers when presented in accordance with the foregoing communication.

**Law Department**

December 6, 1979

Honorable City Council:

Note: The Law Department has been informed by the Election Commission that this proposal may be submitted to the voters at either the May, 1980 or August, 1980 election. We have not filed in the date because we do not know Council's intent in this regard.

Respectfully submitted,  
NANCY P. VANDERBEEK  
Asst. Corporation Counsel

By Council Member Eberhard:

BE IT RESOLVED, by the City Council of the City of Detroit, Michigan:

The said City Council by a three-fifths vote of its members-elect, pursuant to the authority granted by Act No. 279 of the Public Acts of 1969, as amended, proposes that Section 4-104 of the Charter of the City of Detroit shall be amended to read as follows:

Sec. 4-104 Filling Council Vacancies.

IF A VACANCY OCCURS ON CITY COUNCIL THIRTY DAYS OR MORE BEFORE THE FILING DEADLINE FOR A GENERAL ELECTION IN THE CITY OR SPECIAL CITY-WIDE ELECTION, THE VACANCY SHALL BE FILLED AT THAT ELECTION FOR THE REMAINDER OF THE UNEXPIRED TERM. IF A VACANCY OCCURS ON CITY COUNCIL LESS THAN THIRTY DAYS BEFORE THE FILING DEADLINE FOR A GENERAL ELECTION IN THE CITY OR SPECIAL CITY-WIDE ELECTION, THE VACANCY SHALL NOT BE FILLED UNTIL THE SUBSEQUENT GENERAL ELECTION IN THE CITY OR SPECIAL CITY-WIDE ELECTION.

The provision of existing section 4-104 of the Charter of the City of Detroit to be altered or abrogated by such proposal, if adopted, now reads as follows:

Sec. 4-104 Filling council vacancies.

If a vacancy occurs on the city council, a majority of city council members serving shall appoint a successor who shall serve until a new elected city council member takes office. A city council member shall be

viewed nor the unexpired term, if any) at the next general election in the city held not sooner than 180 days after the occurrence of the vacancy.

The purpose of the proposed amendment shall be designated on the ballot as follows:

A city charter amendment proposed by the city council to amend section 4-104 of the charter by removing the power of the city council to appoint a successor to fill a vacancy on the council until a newly elected council member takes office and by providing that the unexpired term of the vacating member shall be filled at the next scheduled city-wide election.

RESOLVED, The City Clerk shall forthwith transmit a copy of the proposed amendment to the Governor of the State of Michigan for his approval, and transmit a copy of the foregoing statement of purpose of such proposed amendment to the Attorney General of the State of Michigan for his approval, as required by law.

The proposed charter amendment shall be, and the same is hereby ordered to be, submitted to the qualified electors of this city at a special election to be held in the city of Detroit, the 20th day of May, 1980, and the City Clerk is hereby directed to give notice of the election and notice of registration thereof in the manner prescribed by law and to do all things and to provide all supplies necessary to submit such charter amendment to the vote of the electors as required by law.

RESOLVED, The proposed amendment shall be submitted to the electors in the following form, to wit:  
**PROPOSED AMENDMENT TO SECTION 4-104 OF THE CHARTER OF THE CITY OF DETROIT TO FILL CITY COUNCIL VACANCIES.**

A city charter amendment proposed by the City Council to amend section 4-104 of the Charter by removing the power of the city council to appoint a successor to fill a vacancy on the council until a newly elected council member takes office and by providing that the unexpired term of the vacating member shall be filled at the next scheduled city-wide election.

**DO YOU FAVOR AMENDING THE DETROIT CHARTER TO PROVIDE THAT IF A VACANCY OCCURS ON CITY COUNCIL THIRTY (30) DAYS OR MORE BEFORE THE FILING DEADLINE FOR A GENERAL ELECTION IN THE CITY OR SPECIAL CITY-WIDE ELECTION, THE VACANCY SHALL BE FILLED AT THAT ELECTION FOR THE REMAINDER OF THE UNEXPIRED TERM, IF A VACANCY OCCURS ON CITY COUNCIL LESS THAN**

THIRTY (30) DAYS BEFORE THE FILING DEADLINE FOR A GENERAL ELECTION, THEN THE VACANCY SHALL NOT BE FILLED UNTIL THE SUBSEQUENT GENERAL ELECTION OR SPECIAL CITY-WIDE ELECTION?

(YES) (NO)

The canvass and determination of the votes on said question shall be made in accordance with the law of the State of Michigan and the Charter of the City of Detroit.

Approved as to Form:

KAY SCHLOFF

Acting Corporation Counsel!

Adopted as follows:

Yea — Council Members Cleveland, Eberhard, Kelley, Mahaffey, McFadden, Rogell and President Henderson — 7.

Nay — None.

\*RECONSIDERATION (No. 5) per Motions Before Adjournment.

Law Department

November 30, 1979

Honorable City Council:

Re: Huford Poskey vs. Allen Woods Condominium Corporation and Michigan Condominium Corporation and City of Detroit, Department of Public Works, Jointly and severally. Circuit Court No. 79-924 NO.

We have reviewed the above captioned lawsuit, the facts and particulars of which are set forth in the memorandum. From this review, it is our considered opinion that a settlement in the amount of \$3,000.00 is in the best interest of the City of Detroit. We, therefore, request your Honorable Body to direct the Finance Director to issue his draft in the amount of \$3,000.00 payable to Huford Poskey and his attorney James A. Colman to be delivered upon receipt of properly executed Releases and Stipulation and Order of Dismissal approved by the Law Department.

Respectfully submitted,

DENNIS BURNETT

Asst. Corporation Counsel

By Council Member Kelley:

RESOLVED, that the Finance Director be and he is hereby authorized and directed to draw his warrant upon the proper fund in favor of Huford Poskey and his attorney James A. Colman in the sum of \$3,000.00 in full payment of any and all claims which he may have against the City of Detroit, Department of Public Works by reason of injuries sustained on 9-5-76 as a result of plaintiff having a rubbish bin falling from its concrete slab on his left foot and that said amounts be paid upon presentation of Releases

portion a water rate increase estimated to become effective January 1, 1980. In addition, the Water and Sewerage Department charges for that service. Information concerning said rates and the rates is available from the City Clerk.

**ADDITIONAL NOTICE**

NOTICE is a supplement to a notice for the same bonds previously issued on January 26, 1980 which maximum interest rate on the bonds was 7% per annum, and does not affect or change the validity or effect of that notice.

**NOTICE OF REFERENDUM**

Registered electors of the City have the right to file a petition for referendum with respect to the issuance of Revenue Bonds described in this notice at a rate of interest in excess of 10% per annum if permitted by state law.

**ADDITIONAL INFORMATION**

NOTICE to the above described bonds, the Water Supply System of the City, the rates to be charged for services related to the financing thereof and any projects to be acquired relating to the foregoing obtained from the office of the Finance Director or Water and Sewerage Department of the City of Detroit.

NOTICE is given pursuant to Sections of Section 33 of Act of Michigan, 1933, as

issue the bonds, the purpose of the bonds, the security for the bonds and the rights of referendum of the electors with respect thereto, and that the provision of forty-five (45) days within which to file a referendum petition is adequate to insure that the City electors may exercise their legal rights of referendum.

4. All resolutions and parts of resolutions inssofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

Approved:

KAY SCHLOFF

Acting Corporation Counsel

Adopted as follows:

Yea — Council Members Cleveland, Cockrel, Eberhard, Hood, Kelley, McFadden, Rogell, and President Henderson — 8.

Nays — None.

\*RECONSIDERATION (No. 3) per Motions before Adjournment.

City Council

Division of Research  
and Analysis

February 18, 1980  
Honorable City Council:  
Re: Charter Amendment to Alter Method of Filling Council Vacancies.

We hereby submit a requested resolution which provides that the proposed Charter amendment, approved December 6, 1979 (J.C.C. P. 3355-56), which would alter the method of filling Council vacancies, shall be submitted to the voters at the November 4, 1980 election instead of the May 20, 1980 special election.

Respectfully submitted,

MICHAEL E. TURNER,  
Director

By Council Member Eberhard:  
WHEREAS, the City Council of the City of Detroit, Michigan, has, pursuant to the authority granted by Act No. 279 of the Public Acts of 1909, as amended, proposed that Section 4-104 of the Charter of the City of Detroit be amended; and

WHEREAS, The proposed amendment would remove the power of the City Council to appoint a successor to fill a vacancy on the Council until a newly elected Council Member takes office and would provide that the expiring term of the vacating Council Member shall be filled at the next scheduled city-wide election; and

WHEREAS, The resolution of the City Council, adopted December 6, 1979 (J.C.C. P. 3355-56), provides that the proposed amendment shall and was thereby ordered to be submitted to the qualified electors of the City at

**Finance Director**

CITY Council does hereby determine the foregoing form of re-issue of Intent to Issue Bonds in manner of publication and adequate notice to the electors of the City and City's Water Supply System, well calculated to inform the intention of the City to

City of Detroit, the 20th day of May, 1980; and

WHEREAS, The City Council has determined that a small voter turnout may be expected at the May 20, 1980 special election.

NOW THEREFORE BE IT RESOLVED, BY the City Council, by a three-fifths vote of its members-elect, that the aforementioned resolution adopted December 6, 1979 shall be and is hereby amended to provide that the order providing for submission of the proposed Charter amendment to the qualified electors at the May 20, 1980 special election shall be and is hereby rescinded; and

BE IT FURTHER RESOLVED, That the resolution adopted December 6, 1979 is further amended to provide that the proposed Charter amendment shall be and is hereby ordered to be submitted to the qualified electors at a special election to be held in the City of Detroit on the 4th day of November, 1980.

BE IT FURTHER RESOLVED, That the City Clerk shall forthwith transmit copies of the December 6, 1979 resolution and of this amending resolution to the Governor of the State of Michigan and to the Attorney General of the State of Michigan.

Adopted as follows:

Yea — Council Members Cleveland, Cockrel, Eberhard, Hood, Kelley, McFadden, Rogell, and President Henderson — 8.  
Nays — None.

\*RECONSIDERATION (No. 4) per Motions before Adjournment.

Neighborhood Services Department  
March 14, 1980  
Honorable City Council:

Re: Authorization to Establish an Appropriation for a Michigan Department of Labor (MDOL)/ Bureau of Community Services (BCS) — Home Weatherization Program (DOE III).  
The Neighborhood Services Department (NSD) has received written notification that \$2,655,173 has been allocated by the Michigan Department of Labor (MDOL)/Bureau of Community Services (BCS) to NSD for the operation of a Home Weatherization Program (DOE III). No local match will be required for this forthcoming grant which is effective during the period January 1, 1980 through September 30, 1980.

The Home Weatherization Program will provide total weatherization services such as, attic and electric water

tion, and storm windows to eligible low-income households. Priority will be given to the handicapped and senior citizens.

Therefore, we respectfully request Your Honorable Body's authorization to establish an appropriation in the amount of \$2,655,173 for the MDOL BCS Home Weatherization Program (DOE III) with a Waiver of Reconsideration.

Respectfully submitted,

EDWARD J. MARTIN,  
Management Services  
Administrator

Approved:

W. I. STECHER,

Budget Director

JOHN P. KANTERS,

Deputy Finance Director

By Council Member Hood:

RESOLVED, That the Neighborhood Services Department be and is hereby authorized to establish an appropriation of \$2,655,173 in order to operate a MDOL/BCS Home Weatherization Program (DOE III); and be it further

RESOLVED, That the Finance Director be and is hereby authorized to establish the necessary accounts, honor vouchers and payrolls in accordance with the foregoing communication and the regulations of MDOL BCS.

Adopted as follows:

Yea — Council Members Cleveland, Cockrel, Eberhard, Hood, Kelley, McFadden, Rogell, and President Henderson — 8.

Nays — None.

\*RECONSIDERATION (No. 5) per Motions before Adjournment.

Department of Public Works  
March 19, 1980

Honorable City Council:  
Re: Petition No. 2138. Saratoga General Hospital. Vacation of a portion of Rossini Avenue east of Gratiot and a portion of the alley and alley return south of Rossini and east of Gratiot.

The above petition requests the vacation of the above described portion of street and alley.

The requested vacations were approved by the Community and Economic Development Department with the recommendation that sufficient land be dedicated for a new street turnaround and for a new alley outlet into State Fair Avenue.

The petition was then referred to us for investigation and report. Our report, accompanied by the original petition, is as follows: